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**THE JURISPRUDENCE OF LABOUR AND INDUSTRIAL LAWS  
IN MALAYSIA: CONSERVATISM OR ACTIVISM IN COURT  
JUDGEMENTS?**

**SANJAY KUMAR KANCHANLAL**



**UUM**  
Universiti Utara Malaysia

**MASTER OF LAW  
UNIVERSITI UTARA MALAYSIA  
2017**

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IN MALAYSIA: CONSERVATISM OR ACTIVISM IN COURT  
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**UUM**  
Universiti Utara Malaysia

**A Thesis Submitted to Ghazali Shafie Graduate School of Government  
In Fulfillment of the Requirements for the Degree of Master of Law  
(LLM)  
Universiti Utara Malaysia**



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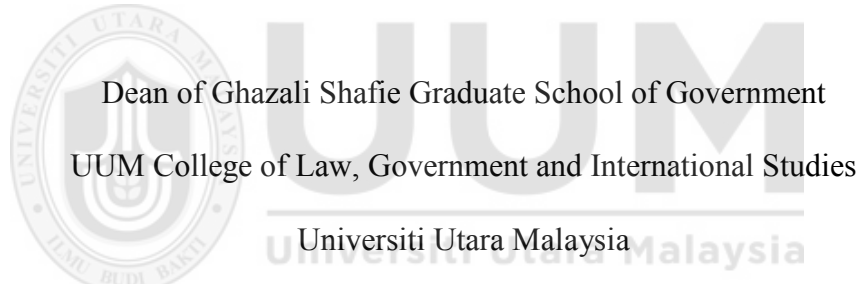


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## ABSTRACT

The area of judicial activism in labour and industrial jurisprudence is not a widely undertaken or debated area of law in Malaysia. Judicial activism as opposed to conservatism often depends on decisions pronounced by competent courts dealing with labour and industrial matters. There are decisions which strictly abide by precedential authority and there are decisions which deal with more flexible intrusions into legislative authority. The research problem is that majority of the resolutions made at the labour court or industrial court in Malaysia are more prone towards conservatism rather than activism. The research objective is to inquire whether such decisions in turn affect an employer and employee relationship in a social justice context. It is to be noted that Malaysia is a signatory to the International Labour Organisation (ILO) which sets minimum standards to be adhered by each country in governing its labour and industrial laws. The research was undertaken for a detailed study of statutes and law cases related to labour and industrial matters in Malaysia to determine whether the judiciary is indeed favourable to conservatism. To this end, analysing statutory provisions such as the Employment Act 1955 and Industrial Relations Act 1967 as interpreted through cases in the labour court, industrial court and civil court gave an end picture of the research objective. Neither could we deny nor be unaware of the influence of colonial laws of England on our jurisprudence which to date has remained more conservative compared to the American and Indian judicial systems. The importance of this research is to enable more just labour and industrial law practices for the ultimate good of social justice and perhaps a reformulation of these laws. The research findings indicated that there was a lack of judicial activism in Malaysia with an inclination towards conservatism. With this finding, recommendations were made in important areas of labour and industrial laws in order to encourage amendments, introduction of new legislations by the legislature and strengthening the judicial decisions by the judiciary.

**Keywords:** Judicial Activism, Labour Jurisprudence, Industrial Jurisprudence, Social Justice, Malaysia.

## ABSTRAK

Bidang aktivisme kehakiman di dalam jurispruden buruh dan perusahaan bukanlah merupakan suatu bidang yang terdapat pelaksanaan dan perdebatan yang meluas dalam undang-undang di Malaysia. Aktivisme kehakiman, bertentangan dengan konservatisme, seringkali bergantung kepada keputusan-keputusan yang dinyatakan oleh mahkamah berwibawa yang berurusan dengan perkara-perkara buruh dan perusahaan. Keputusan-keputusan ini ada yang secara tegas mengikut kuasa duluan mengikat dan ada juga keputusan-keputusan yang berkait dengan pencerobohan kuasa legislatif secara lebih fleksibel. Masalah kajian adalah kebanyakan resolusi yang dibuat di mahkamah buruh atau mahkamah perusahaan lebih cenderung kepada konservatisme daripada aktivisme. Objektif kajian adalah untuk mengkaji sama ada keputusan-keputusan sebegini mempengaruhi hubungan di antara majikan dan pekerja dalam konteks kesaksamaan sosial. Harus diambil kira bahawa Malaysia merupakan penandatangan kepada Pertubuhan Buruh Antarabangsa yang menetapkan piawaian-piawaian minimum yang harus dipatuhi oleh sesebuah negara yang menguruskan undang-undang buruh dan perusahaan mereka. Kajian ini telah dibuat untuk pembelajaran secara terperinci peruntukan-peruntukan perundangan dan kes-kes yang berhubungkait dengan perkara-perkara buruh dan perusahaan untuk menentukan sama ada badan kehakiman menyokong aktivisme kehakiman atau konservatisme. Oleh yang demikian, menganalisis peruntukan-peruntukan perundangan seperti Akta Kerja 1955 dan Akta Perhubungan Perusahaan 1967 yang ditafsir melalui kes-kes di dalam mahkamah buruh, mahkamah perusahaan dan mahkamah sivil dapat memberi gambaran mutakhir kepada objektif kajian. Kita tidak harus menolak atau tidak peduli pengaruh undang-undang kolonial Inggeris ke atas perundangan kita yang sehingga kini masih lebih konservatif berbanding dengan sistem perundangan Amerika dan India. Kepentingan kajian ini adalah untuk membolehkan pengamalan undang-undang buruh dan perusahaan yang lebih saksama untuk kebaikan kesaksamaan sosial dan memulakan usaha pengubalan semula undang-undang ini. Keputusan kajian telah menunjukkan bahawa terdapat kekurangan aktivisme kehakiman di Malaysia dan kecenderungan adalah kepada konservatisme. Dengan penemuan ini, cadangan-cadangan telah dibuat dalam hal-hal penting dalam undang-undang buruh dan industri untuk membuat pindaan, pengenalan undang-undang baru oleh badan perundangan serta pengukuhan keputusan-keputusan kehakiman oleh badan kehakiman.

**Kata Kunci:** Aktivisme Kehakiman, Jurispruden Buruh, Jurispruden Perusahaan, Kesaksamaan Sosial, Malaysia.



## ACKNOWLEDGEMENTS

First and foremost I would like pay my obeisances to God, who is the ultimate Creator, Sustainer and Destroyer of this and countless universes. I am grateful for this opportunity given by Him and may I always seek His blessings and guidance.

I would also like to acknowledge the assistance and help which I received from my supervisor Dr. Che Thalbi Bt Md. Ismail. It would not have been possible for me to have completed this thesis without her very patient input, ideas and guidance.

Further I would like to acknowledge the use of source materials from the Universiti Utara Malaysia's online library as well as hard copies in the Sultanah Bahiyah library. Acknowledgement is also due to usage of source materials from the University of London's Virtual Learning Environment online library.

Next, acknowledgement is due to the many sources which I have referred to both online and in many libraries, especially the University Sains Malaysia library and the library of the Advance Tertiary College Penang, Malaysia and many other sources which may be too numerable to be stated here.

## **DEDICATION**

This Thesis is dedicated first and foremost to my late father Kanchanlal, to my loving mother Madhukanta, sister Bharti and wife Suria.



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*AK Gopalan v State of Madras* (1950) SCR 88.

*Algemene Transport en Expeditie Onderneming Van Gend & Loos v. Nederlandse Administratie der Belastingen*, 1963 E.C.R. 1.

*Associated Newspapers v Wilson* [1995] 2 AC 454

*Astral Amalgamated Tin Bhd and Another Appeal v Abdul Wahab Bin Kopon and Ors and Another Appeal* [2004] 2 MLJ 193.

*Atkins v Children's Hospital* 261 U.S. 525 [1923].

*Barat Estates Sdn Bhd & Anor v Parawakan a/l Subramaniam & Ors* [2000] 4 MLJ 107.

*Beatrice A/P AT Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681.

*Braunstein lwn Accidental Death Insurance Co* [1961] 84 LJKB 2165.

*Bumiputra Commerce Bank Berhad v. Mustaffa Husin & Anor* [2004] 7 MLJ 447.

*Case 6/64, Flaminio Costa v. ENEL*, 1964 E.C.R. 585.

*Case C-294/83 Partie Ecologiste 'Les Verts' v Parliament* [1988] ECR I-01017.

*Chartered Bank, Kuching v Kuching Bank Employees Union* [1965-1967] MLLR 287.

*Che Noh bin Yacob v. Seng Hin Rubber (M) Sdn. Bhd.* [1982] 1 MLJ 80.

*Chief Constable of North Wales v Evans* [1982] 1 WLR 1155.

*Chin Swee Hin v Mohd Arif bin Khalid* [1977] 1 MLJ 31.

*CK Lee & Associates v. Goh Shaw Yuh* [2002] 3 ILR 645 (Award No. 688 of 2002).

*Clarion (M) Sdn. Bhd., Penang & Kesavan Sivalingam Bukit Mertajam* [1987] 1 ILR.

*Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374.

*Datuk Haji Harun bin Haji Idris v Public Prosecutor* [1977] 2 MLJ 155.

*David Francis v. QBE-MBF Insurans Berhad* [2009] 2 LNS 0541.

*Defrenne v Sabena* [1976] ECR 455 [18]- [24].

*Dominion of India v Shribai A. Irani* AIR 1954 SC 596 [1955].



*Dr. A. Dutt v Assunta Hospital [1981] 1 MLJ 304.*

*Dr. James Alfred v. Koperasi Serbaguna Sanya Bhd. Sabah & Anor. [2001] 3 CLJ 541*

*Dreamland Corp Sdn Bhd v Choong Chin Sooi & Industrial Court of Malaysia [1988] 1 MLJ.*

*East Asiatic Company (M) Bhd v Valen Noel Yap [1987] ILR 363.*

*Esso Production Malaysia Inc v Aladdin bin Mohd Hashim [2000] 3 MLJ 270.*

*Federal Hotel Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers [1983] 1 MLJ 175.*

*Fook Thain @ Wong Koh Fong v. Ketua Pengarah Pertubuhan Keselamatan Sosial Application No. SS (PP) 92 of 1996.*

*Fung Keong Rubber Manufacturing (M) Sdn. Bhd. v Lee Eng Kiat & Ors [1981] 1 MLJ 238.*

*Goh Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ 129.*

*Golak Nath v State of Punjab [1967] SCR 762.*

*Gompers v. United States, [1914] 233 U.S. 604/610.*

*Goon Kwee Phoy v J & P Coats (M) Bhd [1998] 2 MLJ 129.*

*H Young & Co v Mayor and Corp of Royal Leamington SPA [1882–83] 8 APP Cas 517.*

*H. L. Bolton (Enginnering) Co. Ltd v T.J. Graham & Sons Ltd [1957] 1 QB159.*

*Hammer v Daggenhart 247 U.S. 251 [1918].*

*Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers [1991] 1 MLJ 419.*

*Harris Solid State (M) Sdn Bhd v Bruno Gentil s/o Periera [1996] 3 MLJ 489.*

*Hoh Kiang Ngan v Mahkamah Persukutuan Malaysia & Anor [1995] 3 MLJ 369.*

*Holiday Inn, Kuching v Lee Chai Siok, Elizabeth [1992] 1 MLJ 230.*

*Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665.*

*Hotel Equatorial (M) Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers [1984] 1 MLJ 363.*

*Hotel Jaya Puri Bhd vs. National Union of Hotel, Bar & Restaurant Workers & Anor [1980] 1 MLJ 109.*

*Hotel Malaya Sdn. Bhd. & Anor. v. National Union of Hotel, Bar & Restaurant Workers & Anor. [1982] 1 CLJ640.*

*Ignatius Dev Anand v Pustaka Titiwangsa (M) Sdn Bhd (Award No 240 of 1980).*

*Inchcape Malaysia Holdings v. RB Gray [1985] 2 MLJ 297.*

*Indian Oil Corporation v Its Workmen [1980] AIR SC 1856.*

*Industrial Court Case number 10/4 – 341/10 between Encik Choong Khen Chew and Hiap Lee Clay Pavers and Brick Sdn Bhd [2011].*

*Jadewealth Sdn Bhd v Addie Halim Ali [2002] 2 ILR 193.*

*Jones v Wrotham Park Settled Estates [1980] A.C. 74, per Lord Diplock, at 10.*

*K C Mathews v Kumpulan Guthrie Sdn Bhd [1981] CLJ (Rep) 62; [1981] 2 MLJ 320.*

*Kathiravelu Ganesan & Anor. v Kojasa Holdings Bhd [1997] 3 CLJ 777.*

*Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia v Crystal Crown Hotel & Resort Sdn Bhd [2014] 3 ILR 410.*

*Kesavananda Bharati v State of Kerala [1973] AIR SC 1461*

*Khaliah Abbas lwn Pesaka Capital Corporation Sdn Bhd [1997] 1 MLJ 376.*

*Koperasi Serbaguna Pekerja Felda Bhd v Zainal Ariffin bin Mohd Noor [1994] 2 ILR 862.*

*Lee Kim v Tai Lee Chan Plywood Agency (Award No 119 of 1980).*

*Lembaga Kumpulan Simpanan Wang Pekerja v. Manfred Smisek & 5 Ors 1 LNS [2009] 1719.*

*Lembaga Kumpulan Wang Simpanan Pekerja v Adorna RMIT Sdn Bhd & 9 Ors [2003] 1 LNS 482.*

*Lembaga Kumpulan Wang Simpanan Pekerja v. Lim Kek Bee & Anor (unreported).*

*Lian Ann Lorry Transport & Forwarding Sdn Bhd v Govindasamy [1982] 2 MLJ 232.*

*Liang Jee Kheng v Yik Kee Restaurant Sdn Bhd [2002] 2 CLJ 750.*

*Lim Phin Khiang v Kho Su Ming [1996] 1 MLJ 1.*

*Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors [2007] 4 MLJ 585.*

*Lochner v US 198 U.S. 45 (1905).*

*Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187.*

*Malayan Banking Bhd. v Mohd Bahari bin Mohd Jamli @ Mohd Jamal [2003] 4 MLJ 432.*

*Malaysia Shipyard & Engineering Sdn. Bhd., Johor Bharu v. Muktiar Singh & 16 Ors [1991] 1 ILR 626 at 627.*

*Malaysian Bar & Anor v Government of Malaysia* [1987] 2 MLJ 165 at p 166.

*Mara Shipyard and Engineering (Terengganu) Sdn. Bhd. v Hussain Ab Rahman* [2003] 3 ILR 177.

*Marbury v Madison* 5 U.S. 137 [1803].

*Milan Auto Sdn Bhd v Wong Sen Yen* [1996] 1 AMR 49.

*Minister of Labour Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9.

*Mirehouse v Rennell* [1833] 1 CL & F 527 6 ER 1015

*Mohd. Nordin bin Othman v. Ketua Pengarah Pertubuhan Keselamatan Sosial* Application No. SS (PP) 71 of 1997.

*New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 [1938].

*Ng Hock Cheng v Pengarah Am Penjara* [1998] 1 MLJ 153.

*Ngeow Voon Yean v. Sungei Wang Plaza Sdn Bhd/ Landmarks Holding Bhd.* [2006] 3 ILR.

*NLRB v Jones & Laughlin Steel Company* 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed. 893 [1937].

*Non-Metallic Mineral Products Mfg. Employee's Union & Ors. v. South East Asia Firebricks Sdn. Bhd* [1981] A.C. 363.

*Northern v Barnet London Borough County Council* [1978] 1 WLR 220.

*Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64.

*Ong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd* [1995] 2 MLJ.

*P Ramachandran Rao v State of Karnataka* [2002] 4 SCC 578

*Paari Perumal v Abdul Majid Hj Nazardin & Ors* [2000] 4 CLJ 127.

*Penang & Seberang Prai Textile & Garment Industry Employees Union vs. Dragon & Phoenix Bhd Penang & Anor* [1989] 1 CLJ 802.

*Penang Park Royal Hotel v. Norzaidi Sabri* [2004] 2 ILR 486 (Award No. 525 of 2004).

*Perbadanan Kemajuan Kraftangan Malaysia v. DW Margaret David Wilson* [2010] 5 CLJ 899.

*Permodalan Plantations Sdn Bhd v Rachuta Sdn Bhd* [1985] 1 MLJ 157

*Queen-Empress v. Pohpi* 13 ALL.171: 1891 A. w. N 48 P.B.

*R Ramachandran v The Industrial Court* [1977] 1 MLJ 145.

*R Ramachandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145.

*Sabah Banking Employees Union v. Sabah Commercial Banks Association* [1989] 2 MLJ 286.

*Said Dharmalingam v. Malayan Breweries (Malaya) Sdn Bhd* [1997] 1 CLJ 646.

*Sarojini a/p Rajoo v. Ketua Pengarah, Pertubuhan Keselamatan Sosial Permohonan No. SS (KS) 77 Tahun 1995.*

*Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 2 MLJ 333.

*Stamford Executive v. Puan Dharsini Ganesan* [1986] ILR Feb 1.

*Subramaniam a/l NS Dhurai v Sandrakasan a/l Retnasamy & Ors* [2005] 6 MLJ 120.

*Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah dan Pihak Berkuasa Negeri* [1998] 3 MLJ 289.

*Supermix Concrete (M) Sdn Bhd v Raduan Ahmad* [2002] 1 ILR 80.

*Surinder Singh Kanda v Government of the Federation of Malaya* [1962] 28 MLJ 169.

*Syarikat Kenderaan Melayu Kelantan v. Transport Workers Union* [1995] 2 MLJ 317.

*Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 AMR 1617.

*Tanjung Jaga Sdn Bhd v Minister of Labour and Manpower* [1987] 1 MLJ 125.

*The Borneo Post Sdn. Bhd. v Margaret Wong* [2001] 8 CLJ 758.

*TWI Training and Certification (SE Asia) Sdn Bhd v Jose a Sebastian* [1998] 2 ILR 879.

*Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products & Ors* [1991] 2 MLJ 119.

*West Coast Hotels v Parrish* 300 U.S. 379 [1937].

*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221.

*William Jacks Co. (M) Sdn. Bhd. v. S Balasingam* [1997] 3 CLJ 235.

*Willis v Baddeley* [1892] 2 Q.B. 324.

*Wong Chee Hong v Cathay Organisation (M) Sdn. Bhd.* [1988] 1 MLJ 92.

## **TABLE OF STATUTES**

Banking and Financial Institutions Act 1989.

Civil Law Act 1956.

Courts of Judicature Act 1964.

Employee Social Security General Rules 1971.

Employees Provident Fund Act 1951.

Employees Provident Fund Act 1991.

Employees Social Security Act 1969.

Employees' Social Security Act 1969.

Employment (Amendment) Act 2012.

Employment (Amendment of First Schedule) Order 2012 (P.U. (A) 88).

Employment (Amendment) Acts 1998 and 2000.

Employment (Exemption) Order 2012 (P.U. (A) 87).

Employment (Limitation of Overtime Work) Regulations 1980.

Employment (Termination and Lay-Off Benefits) Regulations 1980.

Employment Act 1955.

Employment Protection (Consolidation) Act 1978.

Fair Labour Standards Act 1938.

Federal Territory of Labuan (Extension and Modification of Employment Act) Order 2000 (P.U. (A) 400/2000).

Human Rights Act 1998.

Human Rights Commission of Malaysia Act 1999.

Industrial Relations Act 1967 (Malaysia).

Minimum Retirement Age Act 2012.

Minimum Retirement Age Bill 2012 (Now an Act of Parliament - Minimum Retirement Age Act 2012).

Minimum Wages Order 2012.

Minimum Wages Order 2012.

Minimum Wages Order 2012.



National Labour Relations Act 1935.

National Wages Consultative Act 2011.

National Wages Consultative Council Act 2011.

National Wages Consultative Council Act 2011.

Norris-La Guardia Act 1932 (USA).

Occupational Health and Safety Act 1994.

Rule of the Employees Provident Fund 1991.

Rules of Court 2012.

Rules of the Federal Court 1995.

Sabah Labour Ordinance 1950.

Sarawak Labour Ordinance 1952.

Subordinate Courts Act 1948.

Taft-Hartly Act 1947 (USA).

The Labour Management Reporting and Disclosure Act 1959.

Treaty of Lisbon 2007 (EU).

Treaty of Paris 1951 (EU).

Treaty of Rome 1957 (EU).

Wages Council Act 1947.

Wages Council Act 1947.

Wages Council Act 1974.

Workmen's Compensation Act 1952.

## **LIST OF ABBREVIATIONS**

CJ: Chief Justice (Malaysia)  
CJEU: Court of Justice of the European Union  
CLJ: Current Law Journal  
DGIR: Director General of Industrial Relations  
EC: European Community  
ECHR: European Conventions on Human Rights  
ECJ: European Court of Justice  
ECtHR: European Court of Human Rights  
EEC: European Economic Community  
EES: European Employment Strategy  
EPF: Employees Provident Fund (Malaysia)  
EU: European Union  
FC: Federal Constitution (Malaysia)  
FCJ: Federal Court Judge (Malaysia)  
ICLR: Industrial Cases Law Reports (United Kingdom)  
ILO: International Labour Organisation  
ILR: Industrial Law Journal  
ITUC: International Trade Union Confederation  
JCA: Judge of Court of Appeal (Malaysia)  
LIFO: Last in first out  
LNS: Legal Network Series  
LP: Lord President (Malaysia)  
MASCO: Malaysia Standard Classification of Occupation  
MLJ: Malayan Law Journal  
MTUC: Malaysia Trade Union Congress  
NDP: National Development Policy (Malaysia)  
NEP: New Economic Policy (Malaysia)  
OMC: Open Method of Coordination  
PIL: Public Interest Litigation  
SCJ: Supreme Court Judge (Malaysia)  
SOCISO: Social Security Organisation (Malaysia)

SPP: Suruhanjaya Perkhidmatan Pendidikan

TFEU: Treaty on the Functioning of the European Union

UK: United Kingdom

USA: United States of America

UUM: Universiti Utara Malaysia

VLE: Virtual Learning Environment (University of London)



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# CHAPTER 1

## INTRODUCTION

### 1.1 Background

The study scope is a focus on the issue of legal protection under Labour and Industrial court jurisprudence in Malaysia. The research objective aims to understand the role of the judiciary, statutory provisions and common law decisions under labour and industrial causes and their impact on social justice. This is specially to understand the concept of judicial activism in comparison to conservative literal interpretation of statutes and precedential common law which has been popular in the jurisprudence of the English legal system, which have corollaries in the Malaysian legal system. Tun Dato' Seri Zaki Tun Azmi, the former Chief Justice of Malaysia stated that:

*We in Malaysia are influenced to a large extent by the decisions of the House of Lords (now known as the UK Supreme Court) and the Judicial Committee of the Privy Council, ... Yet we in our country give so much weight to their decisions, not because we are bound by them but because by our training in England (at least those among my contemporaries) we are unconsciously influenced by the English judges' thinking as well.*<sup>1</sup>

The then honourable Chief Justice was of the opinion that the judiciary in Malaysia was largely influenced by the English judiciary whose decisions were based on conservative jurisprudential application of statutes and common law. This have led to a lack of judicial activism relating to this branch of the social justice jurisprudence

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<sup>1</sup> In his address to the 15th Malaysian Law Conference titled, "Judicial Activism or Judicial Interpretation," delivered on 30 July 2010, at Kuala Lumpur, published in The Commonwealth Lawyer, Vol 19, No 2, (August 2010).



## BIBLIOGRAPHY

- Abdul Razak, Adilah "Understanding Legal Research," Department of Management and Marketing, Faculty of Economics and Management, University Putra Malaysia (2002). Accessed August 29 2013. <http://econ.upm.edu.my/researchbulletin/artikel/Vol%204%20March%202009/19-24%20Adilah.pdf>.
- Abu Bakar, Abu Hashim. "The Philosophy and Concept of Industrial Relations in Malaysia and the Acts relevant to it." 3 *ILR* (2002): i, v.
- Acker, James R and Richard Irving. *Basic Legal Research for Criminal Justice and the Social Sciences*. Aspen Publishers, 1998.
- Adler, Emily Stier, Clark, Roger. *An Invitation to Social Research: How it's Done*. Wardsworth, Cengage Learning, 2011.
- Ahmadi, A.M. "Judicial Process: Social Legitimacy and Institutional Viability." 4 *S.C.C. J. v.* (1996). 1, 1-10
- Altman, Andrew, *Critical Legal Studies: A Liberal Critique*. Princeton: Princeton University Press, 1993.
- Aminuddin M., *Malaysian Industrial Relations and Employment Law*. 4th. ed. Kuala Lumpur, Mc Graw-Hill, 2003.
- Anantaraman, V Professor. "Relief for Unfair Dismissals: Law And Practice In Malaysia." 5 *MLJ* (2005): li.
- Anantaraman, V Professor. "Malaysian Industrial Relations: The Doctrine Of Constructive Dismissal." 3 *MLJ* (2000): xvii.
- Anantaraman, V Professor. "The Enigmatic Law of Unfair Dismissals in Malaysian Industrial Relations." 2 *MLJ* (1999): ciii.
- Andhyarujina, TR. *Judicial Accountability: India's Method sand Experience*. Delhi: Universal Law Publishing Co. Pvt. Ltd., 2005.
- Andrei Marmor, *Interpretation and Legal Theory*. Hart Publishing Oxford and Portland, Oregon, 2005.
- Arnall, A. *The European Union and its Court of Justice*, 2<sup>nd</sup> ed. Oxford: OUP, 2006.
- Ayadurai, Dunston. *Industrial Relations in Malaysia*, 2nd. ed. Kuala Lumpur: Malayan Law Journal, 1998.
- Ayadurai, Dunston. *Industrial Relations in Malaysia: Law and Practice*. Butterworths Asia, 1992.
- Bacon, Francis. "Of Judicature" in *Essays, Civil and Moral*. (London, 1613): No 36.
- Barak, Aharon. *The Judge In a democracy*. Princeton University Press, 2006.

- Barnes, Lizzie. *Judicial influence and Edwards v Chesterfield Royal Hospital NHS Foundation Trust and Botham v Ministry of Defence*. *I.L.J.*, 42(2) (2013):192-198.
- Baxi, Upendra. *Courage, Craft and Contention: The Indian Supreme Court in the Eighties*. Bombay: N. M. Tripathi Ltd., 1985.
- BBC News. "Howard Warns Judges Over Terror," Wednesday 10<sup>th</sup> August 2005. Accessed February 14, 2014. [http://news.bbc.co.uk/2/hi/uk\\_news/4136940.stm](http://news.bbc.co.uk/2/hi/uk_news/4136940.stm).
- Black, Ann and Gary Bell, eds. *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*. Cambridge University Press, 2011.
- Blackstone, W. *Commentaries on the Laws of England*, Vol 1, 15th ed. T. Cadell and W. Davies, London, 1809.
- Blair, Alasdair. *Companion to the European Union*. Routledge, 2006.
- Card, R. "The Legal Scholar." *The Reporter: Newsletter of the Society of Legal Studies*, 2002.
- Chee Yuan, Goh. "Nube : Stand united to stop erosion of workers' rights." Accessed May 8, 2014. <http://www.fz.com/content/nube-corrupt-system-jeopardising-workers-rights>.
- Chrisdoulaki, Stavroula, *The Formation of European Economic Community in the Context of International Political Economy Theory*, GRIN Verlag, 2010.
- Cichowski, Rachel A. "Women's Rights, the European Court and Supranational Constitutionalism." *Law & Society Review* 38, (2004): 489-512.
- CIMB Economic Update. May 2012. Accessed May 14, 2014. [http://etp.pemandu.gov.my/upload/CIMBMinimum\\_wage\\_policy%E2%80%93Curse\\_or\\_Cure.pdf](http://etp.pemandu.gov.my/upload/CIMBMinimum_wage_policy%E2%80%93Curse_or_Cure.pdf).
- Cooney, Sean, Tim Lindsey, Richard Mitchell, Zhu Ying, eds. *Law and Labour Market Regulation in East Asia*. Routledge, 2002.
- Cross, Frank B & Lindquist, Stephanie A. "The Scientific Study of Judicial Activism." *MINN L REV*, 91 (2007): 1763.
- D Cruz, M.N. *Malaysian Employment Laws: Employment Act 1955 (With Annotations and Court Cases)*. Vol 1. Kuala Lumpur: Mansden Law Books Sdn Bhd, 2008.
- Department of Labour Peninsular Malaysia, Ministry of Human Resource - Labour Court. Accessed July 15, 2014. <http://jtksm.mohr.gov.my/index.php/en/majikan-dan-pekerja/mahkamah-buruh>.
- Devlin, Lord. "Judges and Law Makers" *MLR* 39 (1976) *MLR* 1, 6.

- Dhillon, Guru. "Current Judicial Review and Appeals in Industrial Relations Disputes - Unfairness to the Highest Order to the Workman." *LNS(A)* 1 (2012): xvi, 5.
- Dicey, A V. *Introduction to the Study of the Law of the Constitution*, 10<sup>th</sup> ed. Macmillan, London, 1959.
- Dr. Saharay, HK. *Textbook on Labour and Industrial Laws*. Universal Law Publishing Company, 2011.
- Dworkin, Ronald. *Law's Empire*. London: Fontana Press, 1986.
- Dworkin, Ronald. *Taking Rights Seriously*. London: Duckworth, 1977.
- Eger, Thomas, Jochen Bigus, Claus Ott, Gorg Won Wangenheim, eds. *Internationalisation of the Law and its Economic Analysis*. Gabler/ GWV Fachverlage GmbH: Wiesbaden, 2008.
- Elangkovan, Kaviyarasu. *Minimum Wage Laws in Malaysia: People's Perspective*. Accessed May 14, 2014. <http://apebh2013.files.wordpress.com/2013/02/elangkovan-minimum-wage-laws-in-malaysia.pdf>.
- Faragher, Colin. *Public Law Concentrate*. Oxford University Press, 2015.
- Fenwick, Hellen and Phillipson, Gavin. *Text, Case and Materials on Public Law and Human Rights*. Cavendish Publishing Ltd, 2003.
- Fredman, Sandra. "A Difference with Distinction: Pregnancy and Parenthood Reassessed," *The Law Quarterly Review* 110 (1994): 24.
- Frank, Jerome. *Law and the Modern Mind*. Transaction Publishers: New Brunswick NJ, 2009.
- Gagliardo, Domenico. *Introduction to Collective Bargaining*. New York: Harper & Brothers, 1953.
- Garner, A Bryan, ed. *Black's Law Dictionary*, 8<sup>th</sup> ed. St Paul, Minn: Thomson/West, 2004.
- Ghaiye, BR. *Misconduct in Employment, In Public and Private Sectors*, 2<sup>nd</sup> ed. Lucknow: Eastern Book Company, 1986.
- Gotti, Maurizio and Christopher Williams, eds. *Legal Discourse Across Languages and Cultures*. Bern: Peter Lang AG, International Academic Publishers, 2010.
- Halberstam, Daniel and Mathias Reimann, eds. *Federalism and Legal Unification: A Comparative Empirical Investigation of Twenty Systems*. Dordrecht: Springer Science & Business Media, 2014.
- Hart, HLA. *The Concept of Law*. Oxford University Press, 1961.

Hsien Li, Tan. *The Asean Intergovernmental Commission on Human Rights: Institutionalising Human Rights in South East Asia*. Cambridge University Press, 2011.

The official website of Industrial Court of Malaysia, Ministry of Human Resources. Accessed June 11, 2015. [www.mp.gov.my/index.php/en/statistics](http://www.mp.gov.my/index.php/en/statistics).

Industrial Workers of the World, A Union for All Workers, "The Basic Labour Laws (United States of America)." Accessed May 6, 2014. <http://www.iww.org/organize/laborlaw/Lynd/Lynd3.shtml>.

International Trade Union Confederation (ITUC): Internationally Recognised Core Labour Standards in Malaysia. *Report for the WTO General Council Review of the Trade Policies of Malaysia*. Geneva 18 and 20 January 2010.

Isenbaert, Mathieu. *EC Law and the Sovereignty of the Member States in Direct Taxation*. IBFD, 2008.

Jain, OSN. "Doctrinal and Non-Doctrinal Legal Research." 17 *Jr of Ind Law Inst* (1975): 516. Reprinted in, Verma, SK & Wani, M Afzal eds., *Legal Research and Methodology*, 2<sup>nd</sup> edn. New Delhi: Indian Law Institute, 2001.

Jayapalan, N. *Aristotle*. Atlantic Publishers and Distributors, 1999.

JPA FAQ. "What are the differences between contract for service (CFS) and contract of service (COS)?" Accessed May 8, 2014. [http://www.jpa.gov.my/index.php?option=com\\_content&view=article&id=1219&Itemid=328&lang=en](http://www.jpa.gov.my/index.php?option=com_content&view=article&id=1219&Itemid=328&lang=en).

K. S., Jomo. *Industrialising Malaysia: Policy, Performance Prospect*. Routledge, 1998.

KT, Raja. "Industrial Relations and Management Rights." *Malaysian Management Review*. (1978): 13(2).

Kaczorowska, Alina. *European Union Law*. Routledge, 2013.

Kafaltiya, Dr, A.B. *Interpretation of Statutes*. New Delhi: Universal Law Publishing Co., 2010.

Kanapathy, Vojayakumari. "Industrial Restructuring in Malaysia: Policy Shifts and the Promotion of New Sources of Growth." 2000. Accessed August 29, 2013. [http://www.nomurafoundation.or.jp/data/2000012728\\_Vijakumari\\_Kanapathy.pdf](http://www.nomurafoundation.or.jp/data/2000012728_Vijakumari_Kanapathy.pdf).

Kavanagh, A. "A New Supreme Court for the United Kingdom: Some Reflections on Judicial Independence, Activism and Transparency." University of Oxford Legal Research Papers Series, 58/2010.

Kitanov, Blagoy. *The Open Method of Coordination: A New Effective Form of Governance in the EU?* GRIN Verlag, 2010.

Kmiec, D Keenan. "The Origin and Current Meanings of 'Judicial Activism.'" *Cal. L. Rev.* 92 (2004): 1441, 1447.

- Kum Chee, Lee. "The Malaysian Government Pension Scheme. Whither Its Future Direction?" *Jurnal Ekonomi Malaysia* 31 (1997): 87 - 106.
- Kumar, HL. *Law Relating to Disciplinary Proceedings in Industries*, 6<sup>th</sup> ed. New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009.
- Laporan Penyata Guna Tenaga Kebangsaan (National Employment Returns Report) 2009. Accessed May 5, 2015. <http://www.ilmia.gov.my/index.php/researches/publication/ilmiapublication/national-employment-returns>.
- Le Seur, Andrew, Maurice Sunkin, Joe Eric Kushal Murkens. *Public Law: Text, Cases and Materials*. Oxford: Oxford University Press, 2010.
- Lewis, P Frederick. *The Context of Judicial Activism: The Endurance of the Warren Court Legacy in a Conservative Age*. Rowman and Littlefield Publishers Inc., 1999.
- Licht, A Robert. *Is the Supreme Court the Guardian of the Constitution?* University Press of America, 1993.
- Lisbon European Council. 23 & 24 March 2000, Presidency Conclusions. Accessed May 6, 2014. [http://www.europarl.europa.eu/summits/lis1\\_en.htm](http://www.europarl.europa.eu/summits/lis1_en.htm).
- List of Malaysian States by GDP. Accessed May 8, 2014. [https://en.wikipedia.org/wiki/List\\_of\\_Malaysian\\_states\\_by\\_GDP](https://en.wikipedia.org/wiki/List_of_Malaysian_states_by_GDP)
- Maduro, M.P. *We the Court. The European Court of Justice and the European Economic Constitution: A Critical Reading of Article 30 of EC Treaty*. Oxford: Hart Publishing, 1998.
- Ministry of Human Resources Malaysia. Accessed April 13, 2016, <http://jheks.mohr.gov.my/images/pdf/statistik/Dis2015/Statistik1.pdf>
- Mancini, F and D Keeling. "Democracy and the European Court of Justice." *Modern Law Review* 57 (1994): 175, 183.
- Mankidy, J, A Murugavell, J.C. Gatchalian, and B.C. Gonzales. *Disciplinary Rules and Procedures: India, Malaysia, Philippines*, International Labour Organisation, 1994.
- Marmor, Andrei. *Interpretation and Legal Theory*. Oxford and Portland, Oregon: Hart Publishing, 2005.
- Mastalerek, Joanna. *European Employment Strategy - historic overview and five-year assessment*. GRIN Verlag, 2004.
- Matthiesen, James and Mario Binder. *How to Survive your Doctorate: What Others Don't Tell You*. Open University Press, 2009.
- Mikkelsen, Holly and Renée Jourdenais, eds. *The Routledge Handbook of Interpreting*. Routledge, 2015.



- Miller, Mark C. *The View of the Courts from the Hill: Interactions Between Congress and Federal Judiciary*. University of Virginia Press, 2009.
- Milligan, Gruber and Wise. "Social Security Programs and Retirement Around the World: The Relationship to Youth Employment, Introduction and Summary." National Bureau of Economic Research Working Paper 14647 (January 2009).
- Minimum Wage: "Workers' Rights vs Employers' Readiness, Malaysian Trades Union Congress." Accessed May 5 2015. <http://www.mtuc.org.my/minimum-wage-workers-rights-vs-employers-readiness/>.
- Ministry of Human Resources Malaysia. Accessed April 13 2016. <http://jheks.mohr.gov.my/images/pdf/statistik/Dis2015/Statistik1.pdf>.
- Mohamed, Ashgar Ali. "Promoting Social Justice." New Straits Times. Accessed July 17, 2014. [ib.iium.edu.my/mom2/cm/content/view/view.jsp?key=mp9DLFN4UhSYKGp5CJJdb885sIVyDfbG20080506115833468](http://ib.iium.edu.my/mom2/cm/content/view/view.jsp?key=mp9DLFN4UhSYKGp5CJJdb885sIVyDfbG20080506115833468).
- Mohamed, Ashgar Ali. *A Critical Appraisal of the Adjudication Process of Dismissal under the Industrial Relations Act 1967*, INSAF No 3 (2004): XXXIII, 23.
- Mohd Nadzri, Nazruzila Razniza Binti. "Malaysian Employment Laws: Tracking the Recent Updates," *South East Asian Journal of Contemporary Business, Economics and Law*, Vol. 1 ISSN 2289-1560 (2012): 160.
- Montesquieu. *The Spirit of the Laws*, eds. Anne M Choler, Basia C Miller, Harold S Stone. University of Cambridge Press, 2002.
- Overton J.. *Agriculture and Industry in Colonial Malaya. In Transformation with Industrialisation in Peninsular Malaysia*, edited by Harold Brookfield. Kuala Lumpur: Oxford University Press, 1994.
- Parasuraman, Balakrishnan. "Communication and Consultation in Malaysia: Impact of the 1975 Code of Conduct." University of Wollongong, 2005. Accessed August 13, 2013, <http://airanz.econ.usyd.edu.au/papers/Parasuraman.pdf>.
- Parenti, Michael. *Democracy for the Few*. Wadsworth: Cengage Learning, 2011.
- Piccard, Paul and Ann Piccard. "Judicial Activism or Judicial Independence? From Marbury v Madison to Bush v Gore, A Cautionary Tale of Democracy," (International Bar Association, July 2006). Accessed May 6, 2014. <http://www.ibanet.org/Document/Default.aspx?DocumentUid=359FD32B8425-4DFE-992D-BEBAD64B10FE> [6 May 2014].
- Pollicino, Oreste. "Legal Reasoning of the Court of Justice in the Context of the Principle of Equality Between Judicial Activism and Self-restraint." *European and International Law*. Accessed May 6, 2014. <http://www.ejtn.eu/Documents/About%20EJTN/Independent%20Seminars/Hum>

[an%20Rights%20BCN%202829%20April%202014/POLLICINO Reasoning\\_E CJ\\_Equality\\_GLJ\\_2004.pdf](#)

Posner, Richard A. "In Memoriam: Bernard D. Meltzer (1914–2007)." *University of Chicago Law Review* 74 (2007): 435–38, 437.

Price. I.R. (former Commissioner of Labour). "Brief History of Labour Laws." Accessed April 4, 2014 <http://pesaraonline.net/Labourcourt01.htm>.

Ramasamy, G. . *Discipline at Work*. Kuala Lumpur: Business Bytes Network Sdn Bhd, 2002.

Reid, Lord. *The Judge as Law Maker*, Vol. 12, Society of Public Teachers of Law, 1972.

Rope, Thomas R.. *Social Contract Theory in American Jurisprudence: Too Much Liberty and Too Much Authority*. Routledge, 2013.

Ruddock, Les, Knight Andrew, eds.. *Advance Research Methods in the Built Environment*. Wiley Blackwell, 2008.

Rubery, Jill and Frank Wilkinson, eds.. *Employer Strategy and the Labour Market*. Oxford University Press, 2002.

Rudner, Martin. *Malaysian Development: a retrospective*. Canada: Carleton University Press, 1994.

Salmond, W. John. *Jurisprudence*, 4<sup>th</sup> ed.. London: Steven and Haynes, Bell Yard Temple Bar, 1913.

Sandholtz, Wayne and Alec Stone Sweet. *European Intergration and Supranational Governance*. Oxford: Oxford University Press, 1998.

Shetreet, Shimon and Christopher Forsyth, eds.. *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges*. Koninklijke Leiden, The Netherlands: Brill NV, 2012.

Shukla, Rajesh. "The New Avatar of the Judiciary." Infochange Agenda, March 2013. Accessed July 31, 2013. <http://www.infochangeindia.org/agenda/access-to-justice/the-new-avatar-of-the-judiciary.html>.

Shumaker, Charles E.. *The Formative Years of Malayan Politics*. Xlibris Corporation, 2010.

Singh, BD. *Industrial Relations and Labour Laws*. New Delhi: Excel Books 2007.

Singh, BD. *Labour Laws for Managers*. New Delhi: Excel Books, 2007.

Singh, Karpal. "The Executive, the Judiciary, the legal Profession and the Common Good." *Relevan* Issue No. 1/3 (May 2003): 39.

Stephens Jr, Otis H, and John M Scheb II. *American Constitutional Law*. Vol 1, *Sources of Power and Restraint*. Wadsworth: Cengage Learning, 2012.

- Sundaram, Jomo Kwame, Wong, Sau Ngan eds. *Law, Institutions and Malaysian Economic Development*. National University of Singapore Press, 2008.
- Sundra Karean, Vanitha. "The Constitutional Right to Livelihood As A Developing Field In Malaysian Labour Jurisprudence." *MLJ* 5 (2007): cclxxxiv.
- Sunstein, Cass R.. *Republic.com 2.0*. Princeton: Princeton University Press, 2007.
- Sharifah Suhana Syed Ahmad and Mary George (Associate Professors, University Malaya). "Dispute Resolution Process in Malaysia." *IDE Asian Law Series*, No 17(2002): 32.
- The Malaysian Bar. FAQ on Employment Law by ICPC. Accessed May 12, 2014. [http://www.malaysianbar.org.my/committee/icpc\\_frequently\\_asked\\_questions.html](http://www.malaysianbar.org.my/committee/icpc_frequently_asked_questions.html).
- The Malaysian Economic Figures in 2013. Economic Planning Unit - Prime Minister's Department. Accessed May 8, 2014, <http://www.epu.gov.my/documents/10124/2257e64f-b08d-41b7-bed0-b6e6498c38a3>.
- The official website of Industrial Court of Malaysia, Ministry of Human Resources. Accessed June 11, 2015. [www.mp.gov.my/index.php/en/statistics](http://www.mp.gov.my/index.php/en/statistics).
- The Star Online, 21 May, 2015. "At odds over new minimum wage." Accessed May 5, 2015. <http://www.thestar.com.my/News/Nation/2015/01/20/At-odds-over-new-minimum-wage-Unions-and-bosses-disagree-on-plan-for-RM1200-ceiling/>.
- The World Bank, Labour Force Total. Accessed April 13, 2016. <http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>.
- Wadehra, Dr BL. *Public Interest Litigation: A Handbook*. Universal Law Publishing Co. Pvt. Ltd., 2009.
- Wolfe, Christopher. *Judicial Activism: Bulwark of Freedom or Precarious Security?* Rowman and Littlefield Publishers Inc., 1997.
- Wright, Von GH. *Explanation and Understanding*. Ithaca: Cornell University Press, 1971.